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March 1, 2005

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, Massachusetts 02110

RE: Service Quality, D.T.E. 04-116

Dear Secretary Cottrell:

On December 13, 2004, the Department of Telecommunications and Energy (the "Department") issued an order ("Order") opening an investigation into the quality of service provided by all gas and electric distribution companies ("LDCs") in order to determine whether changes are necessary to improve service quality ("SQ"). The Department requests comments on several topics including (1) penalty offsets; (2) odor calls; (3) staffing levels; (4) standardization of SQ performance benchmarks; (5) SQ incentives; (6) customer service guarantees; (7) property damage; (8) line loss; (9) double poles; and (10) the two reliability performance measures, system average interruption duration index ("SAIDI") and system average interruption frequency index ("SAIFI"). Order, pp. 2-4.

Pursuant to the Department's December 13, 2004 order, the Attorney General submits this letter as his Comments on service quality.

I. EXECUTIVE SUMMARY

The Department is seeking comments on the modification of current service quality guidelines ("Guidelines") it established in *Service Quality Standards for Electric Distribution*

Companies and Local Gas Distribution Companies, D.T.E. 99-84 (2001).[1] The Attorney General supports the Department's efforts to ensure the performance measures, benchmarks and penalty formulas in its Guidelines continue to enhance service quality for ratepayers.

In addition to these comments, the Attorney General has attached a report[2] that addresses in greater detail the issues that the Department wishes to review on service quality. The Department should (1) limit the availability of penalty offsets; (2) strengthen performance benchmarks based on customers' expectations; (3) adopt the use of penalties where LDCs fail to meet standards for which there are currently no penalties levied; (4) standardize performance benchmarks whenever possible; (5) allow for more extensive investigations and audits of LDCs' SQ performance data; and (6) require all electric and gas companies to provide to customers information concerning their service quality performance in the form of a report card. The Department should require the LDCs to strive for continuous improvement in their service quality. Customers are entitled to improved services and performance.

II. COMMENTS ON THE DEPARTMENT'S TOPICS

(1) Offsets: Currently, if an LDC incurs a potential penalty for substandard performance in a penalty provision measure, the Guidelines allow that LDC to offset that penalty if the LDC exceeded its benchmark in other penalty provisions. Please discuss whether the offset provision offers an incentive for an LDC to improve SQ and whether the use of penalty offsets should be continued in the future Guidelines.

COMMENTS:

The Department has determined that offsets were a legitimate means to mitigate the risks that utilities would be penalized for random variations in performance. *See Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies*, D.T.E. 99-84 (2001). In jurisdictions that do not allow offsets, the common argument against offsets is that customers should not be expected to accept substandard performance in some areas just because the utility performs exceptionally in other areas. Attachment 1, p. 20. Also, since customers, while expecting good performance, may prefer lower rates to higher service levels, allowing utilities to earn offsets for levels of performance that customers do not want may result

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[1] The Guidelines were included in LDCs' performance-based regulation ("PBR") plans pursuant to G.L. c. 164, § 1E, and, in subsequent Orders, the Department explained that the Guidelines' measures, benchmarks, and penalties also apply to those distribution companies operating under merger-related or acquisition-related rate plans. *See NSTAR Service Quality*, D.T.E. 01-71A at 8-9, 12-18 (2002); *MECo Service Quality*, D.T.E. 01-71B at 16-26 (2002); D.T.E. 99-84, Letter Order at 5-6 (May 28, 2002); D.T.E 99-84, Letter Order at 3-6 (April 17, 2002).

[2] The report ("Attachment 1"), *Service Quality Regulation of Electric and Gas Utilities in Massachusetts-Assessment and Recommendations For Possible Enhancements*, was prepared for the Attorney General by Energy Advisors, LLC in October 2004.

in a misallocation of resources. *Id.*, p. 20. In addition, the amount of penalties a state imposes for poor performance decreases under existing plans with offsets. *See id.*, p. 21 (an LDC's $3,794,200 penalty was reduced by $587,059 in offsets). The Department, therefore, should limit the availability of offsets to exceptional or significantly improved performance compared to state, regional or national standards or averages for closely related performance measures (*e.g.* superior performance on SAIDI could only offset poor performance in SAIFI).

(2) Odor Calls: Currently, the benchmark for odor calls is 95 percent, which is an obtainable goal of all gas LDCs. Please discuss whether this benchmark should be strengthened in the future Guidelines and SQ plans and whether multiple calls regarding a single gas leak should be considered as a single odor call response.

COMMENTS:

The Department should strengthen the benchmark to measure single gas leak responses since it is an important step toward enhancing service quality. Without this enhancement, the LDCs may actually be unacceptably slow in responding to odor calls, yet avoid penalties by counting multiple calls to a single gas leak. This is contrary to the intent of measuring service quality. The Attorney General supports the Department's proposed change.

The Department should apply a reasonable standard to determine the rate of change. In strengthening the benchmark, the Department should consider (1) regulators' judgment; (2) input from the utilities and other stakeholders; and (3) the rate used in the productivity offset. Attachment 1, p. 14. There is a limit, however, to how far the benchmarks can be strengthened because, at some point, there will be diminishing returns from additional investment in SQ. The Department should allow the utilities the opportunity to argue that the point of diminishing returns has been reached. *Id.*, p. 14.

(3) Staffing Levels: G.L. c. 164, § 1E (a) requires the Department to establish benchmarks for staff and employee levels of LDCs, and G.L. c. 164, § 1E (b) requires that no company may reduce its staffing levels below what they were on November 1, 1997. However, the statute does not define what staffing levels are, e.g., whether they apply only to union employees or to all employees; whether staffing levels should include employees of non-regulated subsidiaries of the LDCs; and whether the lapse in time (between enactment of the statute and adoption of a performance-based rate plan) negates the November 1, 1997 requirement. Further, the statute does not provide for any penalty for the LDCs that do reduce their staffing levels below 1997 numbers. Please discuss the role of staffing levels in the future Guidelines.

COMMENTS:

The Legislature explicitly integrated the provisions governing staffing levels with the requirements regarding a company's service quality. Massachusetts General Laws c. 164, § 1E (b), states that,

> [i]n complying with the service quality standards and employee benchmarks established pursuant to this section, a distribution, transmission, or gas company that makes a performance based rating filing after the effective date of this act shall not be allowed to engage in labor displacement or reductions below staffing levels in existence on November 1, 1997, unless such are part of a collective bargaining agreement or agreements between such company and the applicable organization or organizations representing such workers, or with the approval of the department following an evidentiary hearing at which the burden shall be upon the company to demonstrate that such staffing reductions shall not adversely disrupt service quality standards as established by the department herein.

In 1997, the Legislature recognized that without this mandatory requirement, companies would attempt to reduce costs by decreasing staffing levels, which would adversely affect the quality of service provided to ratepayers. Negating this requirement because of any lapse in time between the enactment of the statute and adoption of a performance-based rate plan is inconsistent with the clear language of the statute. Only the Legislature, not the Department, can alter the statutory requirement that labor (union) displacement is prohibited absent a collective bargaining agreement.

The Department has the authority to assess penalties against LDCs that fail to meet the service quality standards.[3] Staffing levels are "an important matter directly affecting [LDCs] service quality." *Boston Gas Company*, D.T.E. 03-40, p. 506 (2003). The Department already has the ability to levy penalties against any such LDC under G.L. c. 164, § 1E(c), and should adopt a penalty schedule for staff reductions below the required 1997 level. The utilities should make the required showing in each annual filing.

(4) Standardization of SQ Performance Benchmarks: In D.T.E. 99-84, at 3-4, the Department required that LDCs collect any data that may be necessary for the Department to revisit, in the future, the issue of using benchmarks based on nationwide, regionwide, or statewide data. The LDCs sent the Department a report on December 19, 2002 concluding that using the historical performance of each LDC on the respective performance measures remains the best method for establishing performance benchmarks. Summary of Findings Related To Service Quality Benchmarking Efforts, Navigant Consulting, Inc. (December 19, 2002). Please comment.

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[3] In addition to the Department's general supervisory authority over utilities (G.L. c. 164, § 76), the Electric Restructuring Act of 1997 ("Act") (Stat. 1997, chapter 164) inserted G.L. c. 164, § 1E(c), which provides that "each distribution, transmission, and gas company shall file a report with the department by March first of each year comparing its performance during the previous calendar year to the department's service quality standards and any applicable national standards as may be adopted by the department. The department shall be authorized to levy a penalty against any distribution, transmission, or gas company which fails to meet the service quality standards in an amount up to and including the equivalent of 2 per cent of such company's transmission and distribution service revenues for the previous calendar year."

COMMENTS:

The Department should distinguish among service quality measures when deciding to use broader non-company specific benchmarks. Some measures, such as call center answering, bill adjustments, customer satisfaction surveys and safety standards, may lend themselves to statewide or national benchmarks. Attachment 1, p. 12. Others, such as SAIDI and SAIFI, may be more individualized because of operating conditions and issues specific to a utility's service territory. *Id.*

The Department should use an approach based on the concept of "continuous improvement" where the LDCs strive for improvements in their work processes, resulting in improved services and products for their customers. *See* Attachment 1, pp. 13-14. The LDCs' incorporation of this approach into their SQ plans will ensure that the they are not continuing to operate at performance levels from the distant past.

If the Department considers raising company-specific benchmarks under the "continuous improvement" principle, it would also need to review the issue of using standard deviation as a deadband. If benchmarks are no longer tied to historical data, there will not be a basis to calculate a standard deviation and the parties would need to develop another, similar method. *Id.*, pp. 15-16.

(5) SQ Incentives: Please comment as to whether any LDC should be allowed to collect incentives for SQ performance. MECo and Nantucket Electric Company (collectively "MECo"), are allowed to collect incentives back from ratepayers if it exceeds its benchmarks in the penalty provisions. The Department approved incentives as part of MECo's SQ plan because MECo's prior SQ plan, pursuant to Massachusetts Electric Company/Eastern Edison Company, D.T.E. 99-47, at 13, 31-32 (2000), contained penalty/reward structures, and in consideration of the potential benefits to ratepayers. D.T.E. 01-71B at 24 (2001).

COMMENTS:

While the Attorney General supports the concept of incentives for service quality performance, MECo's SQ plan is a pilot project, the results of which require further review and study before applying these incentives to all LDC service quality plans. In addition, benchmarks should reflect customers' reasonable expectations. The Department should require the LDCs to conduct surveys, focus groups or other methods to determine these expectations, thus establishing an appropriate level for particular benchmarks. *Id.*, p. 15.

(6) Customer Service Guarantees: LDCs are currently required to pay $25.00 to any customer if they fail to meet a scheduled service appointment or fail to notify a customer of a scheduled outage. D.T.E. 99-84, at 38. Please discuss whether the future Guidelines should require (a) payment to customers whether or not the customer requests the credit; and (b) classification as a missed service appointment if the LDC contacts the customer

within four hours of the missed appointment and re-schedules the appointment.

COMMENTS:

The Department's future Guidelines should require the LDCs to automatically pay a customer for an LDC's missed service appointment even if the customer does not request payment. Also, if the LDC is more than four hours late for a scheduled service appointment, it should automatically pay the customer, regardless of whether the LDC contacts the customer after the appointment is missed and reschedules.

(7) Property Damage: The Department established a reporting requirement regarding losses related to damage of company-owned property as it was likely to contribute to assessing company safety performance. D.T.E. 99-84, at 17. Please discuss whether this reporting requirement should be made a penalty measure in the future Guidelines.

COMMENTS:

Rather than require LDCs to report company-owned property damage, the Department should require the LDCs to report damages to customer-owned property or property of third parties. Attachment 1, p. 25. This requirement better reflects SQ and is of greater concern to customers and the companies should have this information readily available. *Id.*

(8) Line Loss: In D.T.E. 99-84, at 18, the Department acknowledged that an electric distribution company may experience percentage variations in line losses from year to year unrelated to SQ degradation. Please discuss whether line losses should be made a reporting requirement in the future Guidelines.

COMMENTS:

The Department first required the companies to report annual line loss data because it recognized that line losses have a real impact on costs to ratepayers. D.T.E. 99-84, p. 18. The Attorney General agrees and has supported the Department's continuing effort to address line loss degradation. *See* D.T.E. 99-84, Joint Comments, p. 4 (November 7, 2001). The Department should continue to require the current level of line loss reporting and expand on it, not eliminate it. The Department should require the companies to report any additional data that would assist in determining the percentage of line losses attributable to service quality degradation. In addition, the Department should consider expanding the line loss reporting to incorporate a self assessment section where each utility would describe the root causes for performance changes from prior years. The assessment requirement would also include the utility's plans to improve performance and discuss investments and operating changes that would reduce both distribution and transmission system losses.

(9) Double Poles: G.L. c. 164, § 34B requires electric distribution and telephone companies engaged in the replacement of an existing pole to remove the existing pole from the site

within 90 days after the date of installation of the new pole. Please discuss whether it would be appropriate to include timely removal of double poles as an SQ measure.

COMMENTS:

The Department has the authority to regulate the utilities' removal of double utility poles. *See Report of the Department of Telecommunications and Energy Relative to Reducing the Number of Double Utility Poles in the Commonwealth, Pursuant to Chapter 46 of the Acts of 2003*, Section 110, D.T.E. 03-87, p. 8 (2003). The pole owning utilities have implemented a database for coordinating double pole management with attachees and are required to file semi-annual reports on the status of double poles. *Id*., pp. 14-15. When the Department ordered the utilities to file the status reports, the database had not been in operation long enough to establish it as an adequate tool to ensure compliance with G.L. c. 164, §34B, or to eliminate the backlog of double poles. *Id*., p. 15. The database has now been operating for more than two years and should be yielding accurate data on the removal of double poles.

The Department should include the timely removal of double poles as a service quality measure. Since the implementation of the double pole database, the utilities should have the necessary information to timely remove double poles or explain why it has not been done (*e.g.* an attachee has not yet transferred its attached facilities to the new pole). With the database information, the Department should now be able to identify the root cause of the double pole problem so that penalties can be properly assessed.[4] Therefore, in addition to the reporting requirement, the Department should establish penalties for the delay in removing double poles beyond the 90 day limit.

(10) SAIDI/SAIFI: In D.T.E. 99-84, at 13, the Department accepted as penalty provisions SAIDI and SAIFI. The Department allowed electric LDCs to use their own company specific definitions for "sustained outages or interruptions," "momentary outages," and "excludable major events," to establish benchmarks for SAIDI and SAIFI performance standards. *Id*. Please discuss whether it is appropriate to develop new definitions for these subjects. Further, in D.T.E. 99-84, at 13, the Department specified that the SAIDI and, possibly SAIFI, benchmarks be based on a five-year average of company-specific data. Please comment on whether it would be appropriate to continue to use the five-year standard.

COMMENTS:

The Department should adopt uniform standards. In order to addresses concerns by the LDCs regarding the use of company-specific definitions, the Department could phase in the

[4] In D.T.E. 03-87, the Department recognized that, although G.L. c. 164, §34B, requires the pole owner, not the attachee, to complete the transfer of facilities within 90 days and the assessment of penalties may not extend to contributing parties, the pole owners do have remedies against their attachees for delays. D.T.E. 03-87, pp. 16-18.

uniform definitions and the company-specific definitions would be used to assess penalties until there is sufficient data available under the uniform definitions to use for penalty assessment. Whenever the measurement of performance involves the use of judgement, it is important that data are collected, maintained and tabulated in a consistent manner and are reported in compliance with the Department's orders. To assure that each company is in compliance, the Department should require random independent, third party audits of performance data, collection methods and reporting compliance.

III. OTHER RECOMMENDATIONS

The Attorney General supports other recommendations made in the Report and urges the Department to consider them. *See* Attachment 1, pp. 23-25, 28-32, 36-37 and 41-44. These include the Department requiring LDCs to include other service quality standards in their plans, allowing for more extensive investigations and audits of LDCs' service quality performance data, and obligating the LDCs to issue service quality information in the form of a customer report card. *Id*.

Respectfully submitted,

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cc: Service List for D.T.E. 99-84